

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, October 06, 2016

Hearing Room 301

10:00 AM

1:13-13192 Farhad Besharati

Chapter 7

Adv#: 1:13-01184 MB Travel Corp., dba Downtown Travel v. Besharati

#1.00 Order on application for appearance and examination
re: enforcement of judgment on the judgment debtor

Docket 46

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Farhad Besharati

Represented By
Anthony N Ranieri
Asbet A Issakhanian

Defendant(s):

Farhad Besharati

Represented By
Asbet A Issakhanian

Plaintiff(s):

MB Travel Corp., dba Downtown

Represented By
Glenn Ward Calsada

Trustee(s):

Diane Weil (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 301

10:30 AM

1:11-23855 Edward E. Elliott

Chapter 7

#2.00 First interim application for award of compensation and reimbursement of expenses of Danning, Gill, Diamond & Kollitz, LLP, as general counsel to chapter 7 trustee

Docket 170

Tentative Ruling:

Danning Gill, Diamond & Kollitz, LLP (“Danning Gill”), general counsel to chapter 7 trustee – approve fees of \$211,247.00 and reimbursement of expenses of \$6,747.23 on an interim basis. The Court will authorize payment of \$50,000.00 to Danning Gill on an interim basis, with the remainder of \$167,994.23 to be held back until further free and clear funds are available in the case. The Court has not awarded \$506.00 in fees for the reasons stated below.

Secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, *11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, *1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) (“Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant’s firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.”).

Accordingly, the Court will disallow the following fees incurred in the “Litigation – 2” category:

Date	Description	Timekeeper	Time	Fee
6/23/2015	PREPARATION OF UPDATED FAX REQUEST FOR PAYOFF/DEMAND TO HCID	ASSISTANT: YVES-PIERRE DERAC	0.20	\$46.00

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Edward E. Elliott

Chapter 7

6/26/2015	PREP OF EMAIL TRANSMITTAL TO H. CILDA WORKING WITH MARK GANDARA @ HCID RE BUCKINGHAM PROPERTY AND DEMAND REQUESTED	ASSISTANT: YVES-PIERRE DERAC	0.40	\$92.00
6/26/2015	PREPARATION OF PAYOFF REQUEST/DEMAND FORM	ASSISTANT: YVES-PIERRE DERAC	0.30	\$69.00
6/26/2015	PREP OF EMAIL TRANSMITTAL TO MARK GALANDARA REGARDING INFORMATION PROVIDED AND PAYOFF DEMAND ON LOAN AND 2ND BACKUP FOR ROLLOVER 2ND LOAN	ASSISTANT: YVES-PIERRE DERAC	0.40	\$92.00
6/30/2015	PREPARATION OF EMAIL TRANSMITTAL TO CECILIA ROSALES RE PAYOFF DEMAND REQUEST AND PLAN SUBMISSION IN RESPONSE TO INQUIRY ON SAME AND EMAIL FORMATTED DOCUMENT FOR SAME	ASSISTANT: YVES-PIERRE DERAC	0.20	\$46.00
7/1/2015	ANALYSIS OF REVISED AND NOTARIZED DEMAND REQUEST AND FORMAT SAME AND PREP OF EMAIL TRANSMITTAL AND FORMATTED DOCUMENTS TO CECILIA ROSALES RE BUCKINGHAM PROPERTY	ASSISTANT: YVES-PIERRE DERAC	0.40	\$92.00
7/2/2015	ANALYSIS OF EXECUTED AND NOTARIZED DEMAND REQUEST FORM FOR HCID RE BUCKINGHAM PROPERTY AND FORMAT SAME AND PREP OF EMAIL TRANSMITTAL TO CECILIA ROSALES AND HCID DEPT. FOR PAYOFF ON PROPERTY	ASSISTANT: YVES-PIERRE DERAC	0.30	\$69.00

Applicant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Applicant will be so notified.

Party Information

Debtor(s):

Edward E. Elliott

Represented By

Gail Higgins

Andrew Edward Smyth

Trustee(s):

Diane Weil (TR)

Represented By

Alla Tenina

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CONT... Edward E. Elliott

Chapter 7

John N Tedford
Aaron E de Leest

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1:14-14686 Elmer Alexander Uceda

Chapter 7

#3.00 First and final fee application by the Law Firm of Dennis P. Block & Associates as special litigation counsel for trustee

Docket 251

Tentative Ruling:

Dennis P. Block & Associates, special litigation counsel for David K. Gottlieb, Chapter 7 Trustee – approve fees of \$1,275.00 and reimbursement of expenses of \$955.00.

Applicant to submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Applicant will be so notified.

Party Information

Debtor(s):

Elmer Alexander Uceda

Represented By
Anthony A Friedman

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Doah Kim
Amy L Goldman

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1:16-10073 Shahla Dowlati

Chapter 11

#4.00 Second interim application for compensantion and
reimbursement of expenses of Michael Jay Berger

Docket 129

Tentative Ruling:

Contrary to Local Bankruptcy Rule 2016-1(a)(1)(A)(iii), the applicant has not disclosed the amount of money on hand in the estate or the estimated amount of other accrued expenses of administration.

The Court will continue this hearing to **10:30 a.m. on October 20, 2016**. No later than **October 13, 2016**, the applicant must supplement the fee application with evidence of the amount of money on hand in the estate and the estimated amount of other accrued expenses of administration.

Appearances are excused on October 6, 2016.

Party Information

Debtor(s):

Shahla Dowlati

Represented By
Michael Jay Berger

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1:00 PM

1:15-10007 Theodore A Wendland III

Chapter 7

#5.00 Motion under 11 U.S.C. § 110(j) for injunction against
bankruptcy petition preparer Chris McPhillips

Docket 56

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Theodore A Wendland III

Pro Se

Trustee(s):

David Seror (TR)

Pro Se

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1:00 PM

1:15-11293 Attilio E Armeni

Chapter 11

#6.00 Post confirmation status conference re chapter 11 case
fr. 6/4/15; 8/13/15; 9/17/15; 11/12/15; 5/12/16; 8/11/16

Docket 1

***** VACATED *** REASON: Case closed 9/28/16.**

Tentative Ruling:

Party Information

Debtor(s):

Attilio E Armeni

Represented By
James R Selth
Elaine Nguyen

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1:00 PM

1:15-12948 Eduardo Valdivia and Claudia Huerta

Chapter 11

#7.00 U.S. Trustee motion to dismiss or convert case with an order directing payment of quarterly fees and for judgment thereon

Docket 145

***** VACATED *** REASON: Case dismissed by Court on 9/19/16 [doc. 148]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eduardo Valdivia

Represented By
Richard Warren Shuben

Joint Debtor(s):

Claudia Huerta

Represented By
Richard Warren Shuben

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1:00 PM

1:16-11174 Alfredo Delgado

Chapter 11

#8.00 Debtor's motion for order determining value of collateral
[11 U.S.C. § 506(a), FRBP 3012)

fr: 7/7/16; 8/25/16, 9/22/16(stip)

Docket 33

***** VACATED *** REASON: Order entered 9/27/16 approving
stipulation and vacating hearing**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alfredo Delgado

Represented By
Matthew D Resnik
M Jonathan Hayes
Matthew D Resnik

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1:00 PM

1:16-11174 Alfredo Delgado

Chapter 11

#9.00 Status conference re chapter 11 case

fr. 6/9/16

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:00 p.m. on November 17, 2016**, to coincide with the hearing on debtor's proposed disclosure statement.

Appearances are excused on October 6, 2016.

Party Information

Debtor(s):

Alfredo Delgado

Represented By
Matthew D Resnik
M Jonathan Hayes
Matthew D Resnik

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1:16-12097 N.E. Designs, Inc.

Chapter 11

#10.00 Status conference re chapter 11 case

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **December 12, 2016.**

Deadline to mail notice of Bar Date: **October 11, 2016.**

The debtor must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE. The debtor must lodge the Order Setting Bar Date for Filing Proofs of Claim using mandatory court-approved form F 3003-1.ORDER.BARDATE.

Deadline for debtor and/or debtor in possession to file proposed plan and related disclosure statement: **January 16, 2017.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on February 9, 2017.**

The debtor in possession or any appointed chapter 11 trustee must file a status report, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order setting the deadlines for the debtor and/or debtor in possession to file a proposed plan and related disclosure statement.

Party Information

Debtor(s):

N.E. Designs, Inc.

Represented By
Sandford Frey
Stuart I Koenig

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2:00 PM

1:11-18591 NOOR NORRIS and HELY NORRIS

Chapter 7

#11.00 Motion by chapter 7 trustee to: (1) approve sale of real property free and clear of all liens, interests, claims, and encumbrances with such liens, interests, claims, and encumbrances to attach to proceeds pursuant to 11 U.S.C. §§ 363(B) and (F); (2) approve overbid procedures; determine that buyer is entitled to protection pursuant to 11 U.S.C. § 363(m)

Docket 471

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

NOOR NORRIS

Represented By
Dennis E Mcgoldrick

Joint Debtor(s):

HELY NORRIS

Represented By
Dennis E Mcgoldrick

Trustee(s):

Nancy J Zamora (TR)

Represented By
Jessica L Bagdanov
Reed Bernet

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1:13-17080 Randy Jay Ramirez

Chapter 7

- #12.00** Trustee's motion for an order:
- (1) Authorizing the private sale of personal property free and clear of all liens, interests, claims, and encumbrances pursuant to 11 U.S.C. §§ 363(b) and (f); and
 - (2) Determining that buyer is entitled to a good faith determination pursuant to 11 U.S.C. § 363(m)

fr. 9/22/16

Docket 142

Tentative Ruling:

Grant. Movant must submit the order within seven (7) days.

Tentative ruling regarding the evidentiary objections to the identified paragraphs in, and Exhibits to, the Declarations set forth below:

The Trustee's Evidentiary Objections to the Declaration of Hermilo Hernandez

para. 7: sustained as to the intention of Randy Ramirez: "*Prior to the transfer noted above, I contacted Alonzo and told him that it was Randy Ramirez ('Ramirez') intention to transfer a portion of his interest in franchise No. 11851 ('Franchise') to me.*"

para. 8: sustained.

para. 9: sustained as to "*Alonzo told me that the transfer would be approved if the Franchise went through a facility inspection, made changes based upon that inspection report, and then upgraded the Franchise location. Once all of these conditions were met, Alonzo told me that he would send the paperwork for the transfer as well as the new franchise agreement.*"

para. 11: sustained

para. 14: sustained as to "*While all of these documents were required to be signed to finalize the transfer, the Franchise had performed all of the conditions that Alonzo had required and approved and thus the transfer was going to be approved pursuant to additional documents that we would be provided;*" overruled as to the rest

Exhibits A-B: sustained.

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CONT... Randy Jay Ramirez

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The Trustee's Evidentiary Objections to the Declaration of Fernando Alonzo

para. 5: sustained as to "*Specifically, in approximately October 2013, Milo contacted me and stated that Randy Ramirez intended to transfer a portion of his interest in franchise No. 11851 ('Franchise') to Milo. Milo told me that Randy was going to transfer 49% to Milo.*"

para. 8: overruled as to "*At the time of Milo's request, I told him that the transfer would be approved if the Franchise went through a facility inspection, made changes based upon that inspection report, and then upgraded the Franchise location. Once all of these conditions were met, I told Milo that I would send the paperwork for the transfer as well as the new franchise agreement.*"

para. 9: overruled

paras. 10-14 and Exhibits A-J: sustained

Party Information

Debtor(s):

Randy Jay Ramirez

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Represented By
David Seror
Jessica L Bagdanov
Reed Bernet

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1:14-10835 PlanetHospital.com LLC

Chapter 7

#13.00 Motion to dismiss involuntary petition pursuant to 11 U.S.C. Sec 303(B)

Docket 134

Tentative Ruling:

Deny.

I. BACKGROUND

On February 18, 2014, petitioning creditors Jonathan C. Dailey, Garrett Warner and Jay W. Sisam ("Petitioning Creditors") filed an involuntary chapter 7 petition (the "Involuntary Petition") against PlanetHospital.com. LLC ("Debtor").

On March 17, 2014, Debtor filed an answer to the Involuntary Petition (the "Answer") [doc. 11]. In the Answer, Debtor asserted that Petitioning Creditors' "entitlement to, and or the amount of, a return of funds is contingent and is subject of a reasonable dispute." Answer, p. 2. Nevertheless, Debtor asserted that it "has no objection to [the Involuntary Petition] or to chapter 7 bankruptcy." Answer, p. 2.

On April 18, 2014, the Court entered the *Order for Relief in an Involuntary Case and Setting Deadlines for the Debtor to File Schedules, Statements and Other Documents* (the "Order for Relief") [doc. 21]. The Court based the Order for Relief, in part, on "Debtor's lack of opposition or objection to entry of an order for relief and the Debtor's failure to appear at the status conference held on April 3, 2014." Order for Relief, pp. 1-2.

On October 26, 2015, Debtor filed its schedules and statements [doc. 95]. In its schedule E, Debtor listed 15 creditors with unsecured, priority claims totaling \$41,625. In its schedule F, Debtor listed 35 creditors with unsecured claims totaling \$1,002,426.44.

On May 31, 2016, the chapter 7 trustee (the "Trustee") filed a motion for an order approving a compromise between the Trustee and Joseph M. Adams, Catherine Moscarello, IP Surrogacy LLC fka IP Conceptions LLC and Adams & Pham, APC

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(the "Compromise Motion") [doc. 124]. A creditor, Aaron King, opposed the Compromise Motion [doc. 138]. Mr. King's opposition was based primarily on his contention that the Involuntary Petition should be dismissed because Petitioning Creditors allegedly filed the Involuntary Petition in bad faith and because Petitioning Creditors did not meet the statutory requirements to file the Involuntary Petition.

On September 8, 2016, the Court held a hearing on the Compromise Motion and approved the agreement attached to the Compromise Motion [doc. 141]. On September 19, 2016, the Court entered an order granting the Compromise Motion [doc. 145].

On August 23, 2016, Mr. King filed a motion to dismiss this bankruptcy case (the "Motion") [doc. 134]. Mr. King requests dismissal pursuant to 11 U.S.C. § 303(b)(1) as well as based on Petitioning Creditors' alleged bad faith. Mr. King also asserts that this case is not in the best interest of creditors.

On September 21, 2016, Petitioning Creditors filed an opposition to the Motion (the "Opposition") [doc. 146]. In the Opposition, Petitioning Creditors assert that Mr. King did not properly serve the Motion on all creditors, that Mr. King lacks standing under § 303 and that dismissal is not in the best interest of creditors. The Trustee filed a joinder to the Opposition [doc. 149].

On September 29, 2016, Mr. King filed a reply to the Opposition (the "Reply") [doc. 150]. In the Reply, Mr. King states he is not seeking dismissal under either §§ 303 or 305, but rather on the sole basis of bad faith.

II. ANALYSIS

A. Mr. King Did Not Properly Serve All Creditors

Pursuant to Federal Rule of Bankruptcy Procedure 2002(a)(4), all creditors must be served with notice of a motion to dismiss.

Mr. King did not serve all creditors with notice of the Motion. The Motion may be denied on this basis alone. However, as discussed below, the Motion would be denied even if Mr. King had served all creditors, as required.

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Chapter 7

B. Dismissal under 11 U.S.C. § 303(b)

Pursuant to 11 U.S.C. § 303(b)—

An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

- (1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or an indenture trustee representing such a holder, if such noncontingent, undisputed claims aggregate at least \$15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims.

Under 11 U.S.C. § 303(j)—

Only after notice to all creditors and a hearing may the court dismiss a petition filed under this section—

- (1) on the motion of a petitioner;
- (2) on consent of all petitioners and the debtor; or
- (3) for want of prosecution.

Although Mr. King now asserts he is not bringing the Motion under § 303(b), the Court will briefly address this section because the Motion was originally filed pursuant to this statute.

First, the Order for Relief was entered two years ago. Debtor explicitly stated in the Answer that it does not oppose entry of the Order for Relief. As such, any motion under this section is extremely late and moot.

Moreover, Mr. King does not have standing to bring a motion under § 303(b) because Mr. King is neither a petitioner nor the debtor and there is no "want of prosecution" in this case. As a result, dismissal is inappropriate under § 303.

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C. Dismissal under 11 U.S.C. § 305

Mr. King also states in the Reply that he is not requesting dismissal under § 305, but makes the argument that continuation of this case is not in the best interest of creditors. Thus, the Court will also address dismissal under § 305.

Pursuant to 11 U.S.C. § 305(a)(1), "[t]he court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if... the interests of creditors and the debtor would be better served by such dismissal or suspension...."

Courts consider the following factors when determining whether an involuntary case should be dismissed under § 305(a);

(1) the economy and efficiency of administration; (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court; (3) whether federal proceedings are necessary to reach a just and equitable solution; (4) whether there is an alternative means of achieving an equitable distribution of assets; (5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case; (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and (7) the purpose for which bankruptcy jurisdiction has been sought.

In re Marciano, 459 B.R. 27, 46–47 (B.A.P. 9th Cir. 2011), *aff'd*, 708 F.3d 1123 (9th Cir. 2013).

Here, Debtor has scheduled 35 unsecured creditors with claims totaling \$1,002,426.44, as well as additional claims of \$41,625 entitled to priority. There is no other forum that can efficiently administer Debtor's assets to all creditors and efficiently resolve all disputes between Debtor and its creditors. There also does not appear to be any pending proceeding in state court (the Trustee recently settled the only lawsuit listed in Debtor's Statement of Financial Affairs).

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Mr. King's proposed method of achieving an alternative means of equitable distribution is to dismiss the case under § 303(b) and award damages to Debtor under § 303(i). However, for the reasons stated above, dismissal under § 303(b) is inappropriate and, as a result, Debtor is not entitled to damages under § 303(i). Mr. King has not proffered an alternative means of achieving an equitable distribution outside of bankruptcy.

Moreover, Debtor and its creditors have not worked out an "out-of-court arrangement" which better serves all interests, nor is there any suggestion that such an arrangement would be viable. In addition, there has not been a non-federal insolvency.

Further, Debtor's principal was recently indicted for fraud related to Petitioning Creditors' claims. Request for Judicial Notice [doc. 147], Exhibit 1. According to Petitioning Creditors, it is in the best interest of creditors of this estate to have an independent third-party fiduciary (here, the Trustee) handle the investigation and liquidation of assets for distribution to creditors of Debtor. The Court also finds it is in the best interest of creditors to have one court distribute Debtor's assets equally, rather than dismiss the case and have Debtor's numerous creditors race to the courthouse and obtain, if anything, unequal distribution.

The bankruptcy is also in the best interest of Debtor. Rather than be bombarded with numerous complaints in state court, Debtor is now benefitting from the automatic stay and will be able to resolve its disputes in one forum.

For these reasons, the interests of both Debtor and creditors are best served by continuing this bankruptcy case. There is no cause for dismissal under § 305(a).

D. Dismissal Based on Bad Faith

"Good faith is presumed on the part of the party or parties filing an involuntary petition and the burden of proving bad faith rests on the objecting party." *In re Valdez*, 250 B.R. 386, 390 (D. Or. 1999) (citing *In re Crown Sportswear, Inc.*, 575 F.2d 991, 993-94 (1st Cir. 1978); *In re Alta Title Co.*, 55 B.R. 133 (Bankr. D. Utah 1985); *In re Rite-Cap, Inc.*, 1 B.R. 740, 742 (Bankr. D. R.I. 1979)). "This burden is a significant one, as the objecting party must prove bad faith by at least a preponderance of the evidence." *Id.* (citing *Alta Title Co.*, 55 B.R. at 141).

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First, it appears bad faith on the part of Petitioning Creditors is generally assessed *prior to* entering an order for relief. Cases generally discuss bad faith in the context of a § 303 motion for dismissal of an involuntary petition. *See, e.g. In re Marciano*, 446 B.R. 407, 430-31 (Bankr. C.D. Cal. 2010), *aff'd*, 459 B.R. 27 (B.A.P. 9th Cir. 2011), *aff'd*, 708 F.3d 1123 (9th Cir. 2013) ("[I]t is generally inappropriate for the court to consider the good faith or bad faith of petitioning creditors *when determining whether to enter the order for relief.*") (emphasis added); and *In re Ross*, 63 B.R. 951, 955 (Bankr. S.D.N.Y. 1986) (finding that where the debtor asserted a defense of bad faith in his answer to the involuntary petition, the bankruptcy court did not need to reach the issue of bad faith "if the involuntary petition is sustained and an order for relief entered").

The Third Circuit Court of Appeals did recently hold that an involuntary petition may be dismissed based on bad faith. *In re Forever Green Athletic Fields, Inc.*, 804 F.3d 328 (3d Cir. 2015). Still, the court analyzed whether bad faith existed *before* entry of an order for relief. Significantly, the court tied its bad faith analysis to § 303, which Mr. King may not use as a basis for the Motion based on the discussion above. *Id.*, at 336 ("We adopt the 'totality of the circumstances' standard for determining *bad faith under § 303.*") (emphasis added). As such, *Forever Green* does not support Mr. King's assertion that this Court may dismiss this case based on Petitioning Creditors' bad faith *after* entry of the Order for Relief.

After entry of an order for relief, it appears the appropriate question to ask when considering dismissal of a chapter 7 case is whether dismissal is in the best interest of creditors and the debtor. This appears to be the purpose of § 305, which discusses dismissal of a *case* (as opposed to a petition) and provides that a court may dismiss a case "*at any time*" if the interests of creditors and the debtor would be better served by dismissal. 11 U.S.C. § 305(a)(1). In contrast to § 305, § 303 concerns the period of time prior to entry of an order for relief and dismissal of a *petition*. *See* 11 U.S.C. § 303(c) ("After the filing of a petition under this section but before the case is dismissed or relief is ordered..."); 11 U.S.C. § 303(f) ("...until an order for relief in the case..."); 11 U.S.C. § 303(g) ("At any time after the commencement of an involuntary case under chapter 7 of this title but before an order for relief in the case..."); 11 U.S.C. § 303(i) ("If the court dismisses a *petition* under this section...") (emphasis added); 11 U.S.C. § 303(j) ("Only after notice to all creditors and a hearing may the court dismiss a *petition* filed under this section...") (emphasis added); and 11 U.S.C. § 303(k)(2) ("If the debtor is an individual and the court dismisses a *petition*

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under this section..." (emphasis added).

Thus, bad faith on the part of Petitioning Creditors appears to be irrelevant after entry of an order for relief. Nevertheless, even if the Court were to engage in a bad faith analysis, Mr. King has provided no evidence demonstrating bad faith on the part of Petitioning Creditors.

Mr. Dailey's comments to Mr. King, outlined in Mr. King's declaration, are not proof of bad faith related to the filing of the Involuntary Petition. Rather, if anything, these comments only demonstrate a dispute between Mr. King and Mr. Dailey, two creditors.

Moreover, the evidence about Mr. Adams and Ms. Moscarello is not pertinent to alleged bad faith on the part of Petitioning Creditors, because Ms. Moscarello and Mr. Adams are not petitioners. Although Mr. King contends that Ms. Moscarello and Mr. Adams orchestrated the filing of the Involuntary Petition, organizing creditors for the purpose of filing an involuntary petition does not constitute bad faith absent evidence of other facts.

The remaining declarations in support of the Motion are mostly irrelevant and revolve around third parties' opinions on Debtor's viability or the effect of bankruptcy on Debtor's business. These statements do not establish bad faith on the part of Petitioning Creditors.

Consequently, Mr. King has not met his burden of furnishing evidence that would show, by a preponderance of the evidence, that Petitioning Creditors filed the Involuntary Petition in bad faith. The Court will deny the Motion.

III. CONCLUSION

The Court will deny the Motion.

Petitioning Creditors must submit an order within seven (7) days.

Party Information

Debtor(s):

PlanetHospital.com LLC

Represented By

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Michael Jay Berger
Michael Jay Berger
Michael Jay Berger

Trustee(s):

David Seror (TR)

Represented By
Elissa Miller
Jason Balitzer

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#14.00 Trustee's motion to dismiss chapter 7 case pursuant to 11 U.S.C. § 707(a)
fr. 9/15/16

Docket 921

Tentative Ruling:

9/15/2016 Tentative:

Grant.

I. BACKGROUND

On February 28, 2014, Royal Dining Catering, Inc. ("Debtor") filed a voluntary chapter 11 petition.

On March 3, 2015, Debtor filed its *Fifth Amended Plan of Reorganization Dated March 3, 2015* (the "Plan") [doc. 616] and related disclosure statement (the "Disclosure Statement") [doc. 618]. On May 19, 2015, the Court entered an order confirming the Plan [doc. 701].

On March 3, 2016, Debtor filed a post-confirmation status report indicating that it had not made any plan payments to general unsecured creditors [doc. 812]. On June 16, 2016, Better 4 You Breakfast, Inc. ("B4YB") filed a motion requesting conversion of the case to one under chapter 7 [doc. 880]. On July 11, 2016, the Court entered an order converting this case to one under chapter 7 [doc. 894]. On July 13, 2016, Diane C. Weil was appointed the chapter 7 trustee (the "Trustee") [doc. 899].

On August 15, 2016, the Trustee filed a motion to dismiss the chapter 7 case (the "Motion") [doc. 921]. In the Motion, the Trustee requests dismissal on the basis that the chapter 7 estate does not have assets to distribute to creditors. According to the Trustee, upon conversion of this case, assets that had vested in Debtor upon confirmation of the Plan did not revert to the chapter 7 estate after conversion because the Plan did not include language providing for revesting of assets into a chapter 7

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estate in case of conversion. The Trustee also asserts that, even if assets vested into the chapter 7 estate after conversion, Debtor's assets are encumbered and unavailable for distribution to creditors.

Creditors B4YB and Culver Dairy, Inc. d/b/a Dairy King Milk Farms ("Culver Dairy") opposed the Motion [docs. 952, 955]. Creditors assert that, under binding Ninth Circuit authority, the assets did revert to the chapter 7 estate upon conversion. On the other hand, creditors do not deny that they have liens encumbering these assets and sizeable unpaid administrative expense claims. The parties also do not dispute that Debtor's factoring relationships ended towards the end of 2015.

The parties agree that Debtor's principal, Juan Carlos Saucedo, entered into a joint venture agreement with a third party post-confirmation. The nature of the joint venture agreement is in dispute. B4YB and Culver Dairy assert that, because of this joint venture agreement, the Trustee may litigate "corporate theft" claims against Mr. Saucedo. The Trustee asserts that these claims are not property of the estate and may not be pursued by the Trustee.

II. ANALYSIS

Pursuant to 11 U.S.C. § 707(a), "[t]he Court may dismiss a case under this chapter only after notice and a hearing and only for cause...."

"Movant has the burden to prove by a preponderance of the evidence that cause exists." *In re Innocenti, LLC*, 2016 WL 3483228, at *3 (Bankr. N.D. Cal. June 20, 2016) (citing *In re Hickman*, 384 B.R. 832, 841 (B.A.P. 9th Cir. 2008)). "The dismissal decision rests within the sound discretion of the court...." *Hickman*, 384 B.R. at 840.

One dispute between the parties arises from whether the assets of the reorganized Debtor vested into the chapter 7 estate upon conversion. The parties also dispute whether there are any assets available for distribution to unsecured creditors.

"Although typically confirmation of a plan 'terminates the existence of the estate[.]... reversion of property from the estate to the debtor upon confirmation contained in 11 U.S.C. § 1141(b) is explicitly subject to the provisions of the plan.'" *In re Consol. Pioneer Mortgage Entities*, 264 F.3d 803, 807 (9th Cir. 2001) (quoting *Hillis Motors*,

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Inc. v. Hawaii Auto. Dealers' Ass'n, 997 F.2d 581, 587 (9th Cir. 1993)).

Absent a clear provision in a chapter 11 plan revesting assets into a chapter 7 estate upon conversion, the Ninth Circuit Court of Appeals has held that "two plan components determine whether an asset reverts in a chapter 7 estate post-conversion: an explicit provision regarding the distribution of future proceeds of an asset to creditors, and the retention of broad powers in the bankruptcy court to oversee implementation of the plan." *In re Captain Blythers, Inc.*, 311 B.R. 530, 535 (B.A.P. 9th Cir. 2004) *aff'd*, 182 F.App'x 708 (9th Cir. 2006) (citing *Consolidated Pioneer*, 264 F.3d at 807).

In *Captain Blythers*, the debtor corporation filed an adversary proceeding against the City of Martinez (the "City") to recover \$3.3 million in damages. *Id.*, at 532. During the pendency of the adversary proceeding against the City, the bankruptcy court confirmed the debtor's Third Amended Plan of Reorganization (the "Captain Blythers Plan"). *Id.* The relevant provisions of the Captain Blythers Plan read as follows:

7.1 The payments to the holders of all Allowed claims will be funded [over 72 monthly payments] by the earnings and profits of the reorganized Debtor.

...

9.2 Any claims in favor of the Debtor and Debtor-in-Possession, including claims arising under any provision of the Bankruptcy Code, **shall be fully reserved and may be enforced by the reorganized Debtor for the benefit of creditors in order of priority following confirmation of the Plan.**

9.3 Confirmation of the Plan shall operate as a discharge of the Debtor and Debtor-in-Possession pursuant to Section 1141 of the Bankruptcy Code, provided that nothing in the Plan shall limit the legal effect of such Section on the Debtor and Debtor-in-Possession or the reorganized Debtor.

...

10.1 The Bankruptcy Court shall retain jurisdiction to construe and enforce the Plan, resolve claims and other controversies, and enter

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appropriate orders concerning the bankruptcy case.

Id., at 532-33 (emphasis in case). Subsequently, upon the U.S. Trustee's motion, the bankruptcy court converted the case to chapter 7 and appointed a chapter 7 trustee. *Id.*, at 533. The chapter 7 trustee then filed a complaint to declare the action against the City estate property. *Id.* The debtor disagreed, asserting that the Captain Blythers Plan did not explicitly state that the claims were being held for creditors. *Id.* Applying *Consolidated Pioneer*, the bankruptcy court agreed with the chapter 7 trustee and declared the lawsuit against the City estate property. *Id.*

The Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") affirmed the bankruptcy court's decision. *Id.*, at 532. The BAP, referring to the provisions in the Captain Blythers Plan above as well as to the related disclosure statement, "conclude [d] that the debtor's intent was to litigate the [action against the City] and, if successful, distribute any proceeds to creditors to complete payment in full." *Id.*, at 537. As a result, the BAP found that the first prong of *Consolidated Pioneer* was met.

Turning to the second prong, the BAP looked to paragraph 10.1 of the Captain Blythers Plan, which provided for continued jurisdiction over disputes arising from the Captain Blythers Plan. *Id.*, at 538. Based on this analysis, the BAP held that the action against the City reverted to the chapter 7 estate upon conversion. *Id.*, at 539.

Under *Captain Blythers* and *Consolidated Pioneer*, the Court must first look to the Plan to determine which assets, if any, were to be used for the purpose of distribution to creditors. If such assets exist, the Court must then determine if the Court retained broad jurisdiction to oversee implementation of the Plan.

A. Are there Explicit Provisions Regarding the Distribution of Future Proceeds of an Asset to Creditors?

To make a determination about whether the Plan contains explicit provisions regarding distribution of proceeds of an asset to creditors, the Court must first ascertain which assets were employed in the Plan. Aside from provisions through which secured creditors retained their liens or directly collected from accounts receivable, the Plan provided for distributions through two avenues: (1) cash from "existing Cash balances, the Debtor's operations, post-Effective Date financing, or post-Effective Date cash infusions made as a result of sale, merger, or otherwise," (the

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"Operating Assets") Plan, § 7.1; and (2) by establishing a litigation trust which would be vested with Debtor's litigation rights (the "Litigation Trust Assets"). Plan, § 5.7 and Schedule 1.1.53.

Having identified the assets earmarked in the Plan, the next question is whether Debtor's intent was to use these assets to distribute proceeds therefrom to creditors. *Captain Blythers*, 311 B.R. at 537.

1. The Operating Assets

As to the Operating Assets, section 7.1 of the Plan reads:

7.1. Distributions. Reorganized Debtor shall be responsible for making the Distributions described in this Plan except for those distributions of the Litigation Trust Assets, which distributions shall be made by the Litigation Trustee. Except as otherwise provided in this Plan or the Confirmation Order, the Cash necessary for Reorganized Debtor to make payments pursuant to this Plan may be obtained from existing Cash balances, the Debtor's operations, post-Effective Date financing, or post-Effective Date cash infusions made as a result of sale, merger, or otherwise.

Plan, § 7.1. The "payments pursuant to this Plan" are outlined in sections 4.1 through 4.7 of the Plan and provide for monthly payments to Class 1, Class 2, Class 4 and Class 7 creditors. In fact, section 4.7.3 of the Plan also provides for "excess cash payments" to estate professionals, holders of allowed priority tax claims and general unsecured creditors as follows:

4.7.3. Excess Cash Payments. Where (i) Ending Cash (as such term is used in the projections attached to the Disclosure Statement) at the end of any plan projection quarter exceeds \$100,000 and (ii) the actual Ending Cash is double the amount of the projected Ending Cash for the quarter, then 50% of the amount in excess of the projected Ending Cash will be paid (x) first to satisfy any outstanding Professional Fees until they are paid in full, second (y) then to the Holders of Allowed Priority Tax Claims until they are paid in full, and (z) finally, to the Holders of Allowed General Unsecured Claims, which payment shall

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be in addition to the Distributions provided for in Section 4.6.1 in the Plan. The remaining 50% of the excess Ending Cash shall remain with Reorganized Debtor....The Excess Cash Payments obligation shall cease on the Final Distribution Date.

Plan, § 4.7.3. Based on this language, it is evident that the Operating Assets would be used for distribution to creditors in accordance with the Plan. As such, the first prong of *Consolidated Pioneer* met as to these assets.

2. The Litigation Trust Assets

It is clear that the Litigation Trust Assets were earmarked for distribution to creditors under the Plan. In fact, both the Plan and the litigation trust agreement, attached as Exhibit A to the Plan, make abundantly clear that the Litigation Trust Assets would be for the benefit of creditors. Section 4.7.2 of the Plan states:

4.7.2 Interest in Litigation Trust. In addition to the Distribution(s) provided for in Section 4.6.1 above, each Holder of an Allowed General Unsecured Claim will also receive on account of its Allowed General Unsecured Claim on the later of the Effective Date or the date on which such General Unsecured Claim becomes an Allowed General Unsecured Claim, its Pro Rata portion of the beneficial interests in the Litigation Trust, which shall receive any proceeds of Litigation Claims as qualified by Section 5.15, or such other less favorable treatment as agreed to in writing by Debtor or the Litigation Trustee and the Holder of an Allowed General Unsecured Claim.

Plan, § 4.7.2. The Plan further states:

5.8. Purpose of the Litigation Trust. The Litigation Trust shall exist after the Effective Date, with all the powers of a trust under applicable California law. The Litigation Trust shall be established *for the purpose of liquidating the Litigation Trust Assets and making post-Effective Date Distributions of Litigation Trust Assets under this Plan....*

5.9. Litigation Trust Assets. On and after the Effective Date, the

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Litigation Trust will own the Litigation Trust Assets and shall act in its sole discretion as necessary to liquidate the Litigation Trust Assets and to enhance or preserve the value of the Litigation Trust Assets. The Litigation Trust Assets shall consist of the Litigation Claims set forth in Section 1.1.53 of the Plan. The Litigation Trustee shall succeed to all such powers as would have been applicable to Debtor with respect to the Litigation Trust Assets and *the Litigation Trustee shall be authorized to take all actions that the Litigation Trustee determines is in the best interests of the beneficiaries of the Litigation Trust.*

Plan, §§ 5.8, 5.9 (emphases added). In addition, the Recitals in the litigation trust agreement state, in part, that "the Debtor absolutely and irrevocably grants, assigns, transfers, conveys, and delivers to the Litigation Trust, on behalf of and for the benefit of the Beneficiaries (as defined in Section 1.01 below), all right, title and interest of all of the Litigation Trust Assets." Plan, Exhibit A, p. 1. The Declaration of Trust in the litigation trust agreement also states:

IT IS HEREBY FURTHER COVENANTED AND DECLARED, that the assets of the Litigation Trust are to be held and applied by the Litigation Trustee *solely for the benefit of the Beneficiaries and for no other party*, subject to the further covenants, conditions and terms hereinafter set forth.

Plan, Exhibit A, p. 2 (emphasis added). Article II of the litigation trust agreement continues:

2.02 Purpose of Litigation Trust. The purpose of this Litigation Trust is to implement the Plan by providing for the vesting in the Litigation Trustee of the ownership of and the responsibility for the protection and conservation of the Litigation Trust Assets *on behalf of and for the benefit of the Beneficiaries*, including the temporary investment of Litigation Trust moneys as provided herein, the payment of Litigation Trust Costs, the making of any other payments provided to be made from the Litigation Trust as set forth in the Plan and this Trust Agreement, and the distribution of distributable proceeds and assets to the Beneficiaries in accordance with the provisions of the Plan and this Trust Agreement, in each case including the powers with respect

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thereto set forth in Article VII hereof.

2.03 Incidents of Ownership. *The Beneficiaries shall be the sole beneficiaries of the Litigation Trust, and the Litigation Trustee shall retain only such incidents of ownership of the Litigation Trust Assets as are necessary to undertake the actions and transactions authorized herein on behalf of the Beneficiaries.* The Litigation Trust is established by and the Beneficiaries who are treated as the grantors under the Internal Revenue Code, and the Litigation Trust shall be a liquidating trust whose income and losses are attributable to the Beneficiaries, as provided in Section 671 through Section 679 of the Internal Revenue Code and subject to applicable law.

Plan, Exhibit A, p. 4 (emphases added).

The litigation trust agreement defines "Beneficiaries" as "the holders of Allowed Professional Fee Administrative Claims (subject to the limitations contained in the Plan) and Allowed Class 6 General Unsecured Claims in the Chapter 11 Case." Plan, Exhibit A, p. 2. As a result, the provisions in the Plan and the incorporated litigation trust agreement are explicit and require distribution of proceeds of the litigation trust to creditors. Consequently, the Litigation Trust Assets vested in the chapter 7 estate upon conversion.

The Trustee asserts that the litigation trust is a separate entity controlled by an independent trustee and, as a result, the Litigation Trust Assets did not vest into the chapter 7 estate. However, the Trustee does not provide any authority providing that the creation of a litigation trust through a chapter 11 plan prevents the trust, or the assets held by the trust, from vesting into a chapter 7 estate upon conversion (barring language explicitly stating that such assets will *not* vest upon conversion, which is not present here). In fact, the BAP has come to the opposite conclusion.

In *In re Villalobos*, the debtor filed a chapter 11 petition on behalf of himself and two limited liability companies. 2014 WL 930495, at *1 (B.A.P. 9th Cir. Mar. 10, 2014) (unpublished disposition). The bankruptcy court confirmed the debtors' liquidation plan, through which a liquidating trust was established. *Id.*, at *2. The liquidating trust would be administered by a liquidating trustee, who would collect, among other assets, proceeds from litigation against a third party. *Id.* The Internal Revenue Service

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(the "IRS"), a creditor, appealed confirmation of the debtors' liquidating plan as well as an order from the bankruptcy court denying the IRS' motion to convert the case to chapter 7. *Id.*, at *5.

On appeal, the debtors asserted that the appeal may be moot if the BAP reversed the bankruptcy court's confirmation order and the case was converted to a chapter 7. *Id.*, at *8. The debtors argued that "because the assets have vested in the liquidating trust and there is no longer a chapter 11 estate, a subsequent conversion would not vest trust property in the chapter 7 estate. Consequently...the chapter 7 trustee would not have authority to liquidate the assets that are now held in trust." *Id.*

The BAP rejected this argument:

[A]pplication of controlling Ninth Circuit law to these facts leads us to conclude that conversion of the chapter 11 cases would revest the assets held by the liquidating trust in the chapter 7 estate. We look at "two plan components to determine whether an asset revests in a chapter 7 estate post-conversion: an explicit provision regarding the distribution of future proceeds of an asset to creditors, and the retention of broad powers in the bankruptcy court to oversee implementation of the plan." *Captain Blythers, Inc. v. Thompson (In re Captain Blythers, Inc.)*, 311 B.R. 530, 539 (9th Cir.BAP2004) (citing *Pioneer Liquidating Corp. v. U.S. Trustee (In re Consol. Pioneer Mortg. Entities)*, 264 F.3d 803, 807 (9th Cir. 2001)).

Here, neither the Plan nor the Liquidating Trust Agreement say anything about what happens to the assets in the liquidating trust upon conversion to chapter 7. However, the Plan contains explicit provisions regarding distribution of the liquidation proceeds to Debtors' creditors. The Plan states that Debtors' non-exempt assets, claims and liabilities were to be transferred to a liquidating trust and that the liquidating trustee would administer those assets through the operative trust agreement for the benefit of Debtors' creditors. *See* Plan at p. 2:19–24. The Plan further provides that it will be executed and implemented through the transfer to the liquidating trust of all of "Debtors' assets ... in an amount sufficient to pay [] Debtors' allowed secured and unsecured creditors' claims over the life of the Liquidating Trust...."

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See Plan, Art. VIII, ¶ 1 at pp. 36–37. Finally, the Plan states that the liquidating trustee "shall be responsible for making the payments contemplated in the Liquidation Plan, collecting money intended for distribution to claimants, and transmitting it to them." *See* Plan, Art. IX, ¶ 1 at p. 45. Collectively, the only plausible inference from these provisions is that the non-administered assets which remained in the liquidating trust would revert to the chapter 7 estate so that they could be liquidated and the proceeds distributed to creditors consistent with Debtors' intent under the Plan.

Id. The BAP also looked to what would happen upon termination of the liquidating trust:

This result would also follow from the termination of the liquidating trust. Although the Liquidating Trust Agreement does not have a termination clause, in Article II, ¶ 3, the agreement states that the liquidating trust's "sole purpose is to hold, liquidate, and distribute the Trust Assets in accordance with the provisions of the Plan." If Debtors' cases were converted, the trust would terminate since the purpose of the trust would become an impossibility. At this point, the liquidating trustee would be compelled under § 542 to turn over the remaining assets to the chapter 7 trustee.

Id., at *9; *see also Consolidated Pioneer*, 264 F.3d at 807 (holding that assets held by a liquidating corporation created by the debtor's chapter 11 plan revested into the chapter 7 estate upon conversion because the liquidating corporation "was not created to be an independent for-profit corporation. Rather, the Joint Plan directed [the liquidating corporation] to distribute proceeds for the benefit of investors.").

Here, the language in the litigation trust agreement is very similar to the language in the liquidating trust agreement in *Villalobos*. As noted above, the litigation trust agreement states explicitly that the Litigation Trust Assets are to be used "solely for the benefit of the Beneficiaries and for no other party...." Plan, Exhibit A, p. 2. The Plan and the litigation trust agreement state in multiple sections that the liquidating trust was established for the benefit of creditors.

In addition, although the litigation trust agreement here does have a termination

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clause, the termination clause favors the revesting of assets into the chapter 7 estate. The termination clause reads as follows:

4.01 Duration. The existence of this Litigation Trust shall terminate on the earlier of (i) five (5) years after the Effective Date, or (ii) the date on which the Litigation Trust Assets have been either reduced to Cash or equivalents or abandoned and all distributable proceeds have been distributed; *provided, however*, that the Litigation Trustee or another party in interest may move to extend the term of this Litigation Trust, for good cause with the approval of the Court. Notwithstanding anything to the contrary in this Trust Agreement, in no event shall the Litigation Trustee unduly prolong the duration of the Litigation Trust, and the Litigation Trustee shall at all times endeavor to distribute the Distributable Proceeds to the Beneficiaries and terminate the Litigation Trust as soon as practicable in accordance with this Trust Agreement and the Plan.

Plan, Exhibit A, p. 6 (emphasis in original). In *Villalobos*, the BAP found that the trust's sole purpose was to liquidate and distribute trust assets in accordance with the provisions of the plan in that case. *Villalobos*, 2014 WL 930495 at *9. Because, upon conversion, distributing assets "in accordance with the provisions of the Plan" would be impossible, and without any language in the plan or trust agreement explicitly stating otherwise, the BAP found that the liquidating trustee would have to turn over assets of the trust to the chapter 7 trustee. *Id.*

Here, although there is a termination clause in the trust agreement, the termination clause itself states that "the Litigation Trustee shall at all times endeavor to distribute the Distributable Proceeds to the Beneficiaries and terminate the Litigation Trust as soon as practicable in accordance with this Trust Agreement and the Plan." Plan, Exhibit A, p. 6. As such, the termination clause reasserts the Plan's and the litigation trust's sole purpose, which is to distribute assets to creditors, and explicitly states that distribution is to be done in accordance with the Plan. *See also* Plan, Exhibit A, p. 4 ("The purpose of this Litigation Trust is to implement the Plan...."). As in *Villalobos*, upon conversion, with the Plan no longer in effect, the purpose of the trust became a nullity and the Litigation Trust Assets vested into the chapter 7 estate. Consequently, the first prong of *Consolidated Pioneer* is also met as to the Litigation Trust Assets.

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B. Did the Court Retain Broad Powers to Oversee Implementation of the Plan?

The parties do not dispute that the Court retained broad powers to oversee implementation of the Plan. That the Court retained such broad powers is evident from the following language contained in the Plan:

10.1. Jurisdiction. Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Case, Reorganized Debtor, and the Litigation Trust after the Effective Date as is legally permissible, including jurisdiction to:

10.1.1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims;

...

10.1.3. Resolve any matters related to the assumption, assignment, or rejection of any Executory Contract or Unexpired Lease to which Debtor or Reorganized Debtor are party and to hear, determine, and, if necessary, liquidate any Claims arising there from or Cure amounts related thereto;

10.1.4. Insure that Distributions to Holders of Allowed Claims and Equities Securities are accomplished pursuant to the provisions of this Plan;

10.1.5. Decide or resolve any motions, adversary proceedings, objections to claim, contested or litigated matters, and any other matters and grant or deny any applications or motions involving Debtor, Reorganized Debtor, or the Litigation Trustee that may be pending on the Effective Date or commenced thereafter as provided for by this Plan;

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10.1.6. Enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all contracts, instruments, releases, and other agreements or documents created in connection with this Plan or the Disclosure Statement or the Confirmation Order, except as otherwise provided herein;

10.1.7. Decide or resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of any Final Order, this Plan, the Confirmation Order, or any Person's obligations incurred in connection with this Plan or the Confirmation Order;

10.1.8. Modify this Plan before or after the Effective Date pursuant to Section 1127 of the Bankruptcy Code and Section 11.1 of this Plan or modify any contract, instrument, release or other agreement or document created in connection with this Plan, the Disclosure Statement, or the Confirmation Order; or remedy any defect or omission or reconcile any inconsistency in any Final Order, this Plan, the Confirmation Order, or any contract, instrument, release or other agreement or document created in connection with this Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary or appropriate to consummate this Plan, to the extent authorized by the Bankruptcy Code;

...

10.1.11. Determine any other matters that may arise in connection with or relate to this Plan, any Final Order, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with this Plan, the Disclosure Statement, any Final Order, or Confirmation Order, except as otherwise provided herein;

...

10.1.13. Hear and decide Litigation Claims and continue to hear and decide pending Litigation Claims and any other claim or cause of

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action of Debtor and Reorganized Debtor; and

10.1.14. Decide or resolve any matter over which the Bankruptcy Court has jurisdiction pursuant to Section 505 of the Bankruptcy Code.

Plan, § 10.1. In addition to this broad language, the litigation trust agreement also states that "the Court shall have jurisdiction over the Litigation Trust and the Litigation Trustee, as provided herein and in the Plan." Plan, Exhibit A, p. 1. Thus, the second prong of *Consolidated Pioneer* is also met.

As a result, both the Operating Assets and the Litigation Trust Assets vested into the chapter 7 estate.

C. Will the Reverted Assets be Available for Distribution to Unsecured Creditors?

1. The Operating Assets

The issue with the Operating Assets, as noted by the Trustee, is that factoring companies PMF Factors, Inc. ("PMF") and LSQ Factoring, LLC ("LSQ") hold blanket liens on all of Debtor's property. *See* Disclosure Statement, p. 8 ("[T]he Debtor contends that it does not own Assets sufficient to secure...Creditors claiming liens via judgment or general blanket liens junior to PMF and LSQ...."); *and* Disclosure Statement, p. 14 ("The Debtor has Assets consisting of a fleet [of] approximately sixty vehicles, which the Debtor intends to reduce to approximately twenty vehicles prior to the Confirmation Hearing, account receivables, which have been factored both pre- and post-petition and thus, are primarily secured by PMF or LSQ, kitchen and operational equipment, and inventory. The Debtor believes all of its Assets are encumbered with the exception of certain vehicles on which liens have not specifically been recorded.").

Aside from the fact that the Operating Assets are likely encumbered, it also appears that Debtor is no longer operational and, as a result, not generating sufficient income to make distributions despite the fact that the Operating Assets reverted to the chapter 7 estate. In her declaration in support of the Motion, the Trustee states that Debtor

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Chapter 7

entered into a joint venture agreement with Bestway Sandwiches, Inc. ("Bestway") in November 2015. Declaration of Diane C. Weil ("Weil Declaration"), ¶ 5. Under the joint venture agreement, Bestway was entitled to be paid a certain amount per meal it delivered and Debtor would assign one or more of its accounts receivable to Bestway and instruct Debtor's clients to pay Bestway directly. Weil Declaration, ¶ 7. The parties also entered into a security agreement through which Bestway was given a security interest in Debtor's "accounts, equipment, fixtures, general intangibles, goods, inventory and receivables." Weil Declaration, ¶ 8. Thus, it seems any cash generated from Debtor is being assigned, at least in part, to Bestway.

Moreover, B4YB's CEO, Fernando Castillo, filed a declaration in support of B4YB's motion to convert the case to a chapter 7 alleging that Juan Carlos Saucedo, Debtor's principal, "is abandoning [Debtor's] business and all of its obligations under the Plan while taking all of [Debtor's] corporate opportunities to new companies so as to avoid the debts and obligations of the Plan." Declaration of Fernando Castillo, ¶ 18. Whether or not such allegations are true, at the least it is apparent that Debtor did not generate enough cash to make distributions under the Plan and Debtor's significant defaults under the Plan resulted in conversion of this case.

Although the Operating Assets reverted to the chapter 7 estate under the language of the Plan, there do not appear to be any significant, unencumbered Operating Assets available for distribution in a chapter 7 case.

2. The Litigation Trust Assets

As with the Operating Assets, it appears that the Litigation Trust Assets do not have any value to the estate such that administering assets held by the trust would result in distribution to unsecured creditors. In fact, in its opposition, B4YB itself admits that the Litigation Trust Assets are of inconsequential value:

Whether the chapter 7 case should be dismissed does not at all turn on what measly claims are now or ever were in the Litigation Trust, pre- or post-conversion. The Litigation Trust and its assets and causes of action...are inconsequential in this case.

Doc. 952, p. 12. Thus, it appears the parties are in agreement that the Litigation Trust

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Assets hold no value to unsecured creditors.

3. The Alleged Corporate Theft Claims

The joint venture agreement referred to by the parties arose in November 2015. Weil Declaration, ¶ 5. In addition, the allegations in B4YB's and Culver Dairy's oppositions regarding Mr. Saucedo's use of Debtor's assets occurred between February and June 2016.

The Plan was confirmed on May 19, 2015. The Court did not convert this case to one under chapter 7 until July 11, 2016. As noted by the Trustee, the alleged claims based on these allegations arose post-confirmation and pre-conversion. As a result, they are not property of the estate. *See In re Kenny G. Enterprises, LLC*, 512 B.R. 628 (C.D. Cal. 2014).

Based on the above, the estate does not have any assets available for distribution to unsecured creditors. Consequently, the Court will dismiss this case.

III. CONCLUSION

The Court will grant the Motion.

The Trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Royal Dining Catering, Inc.

Represented By
Danielle A Pham
Eve H Karasik
Eric D Goldberg

Trustee(s):

Diane Weil (TR)

Represented By
John N Tedford

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1:14-13981 Encino Center LLC

Chapter 11

#15.00 Confirmation of plan of reorganization by
proposed by Debtor, Encino Center, LLC

fr. 7/9/15 (stip); 8/20/15(stip); 10/22/15; 1/7/16; 2/18/16; 3/24/16;
6/9/16; 7/28/16

Docket 259

Tentative Ruling:

Confirm *First Amended Plan of Reorganization Proposed by Debtor, Encino Center, LLC* [doc. 259]. No later than **March 23, 2017**, the debtor must file a status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) AND BE SUPPORTED BY EVIDENCE. A postconfirmation status conference will be held on **April 6, 2017 at 1:00 p.m.**

The debtor must submit the confirmation order within seven (7) days.

Party Information

Debtor(s):

Encino Center LLC

Represented By
Sandford Frey
Stuart I Koenig
Marta C Wade
Fredric J Greenblatt

Movant(s):

Encino Center LLC

Represented By
Sandford Frey
Stuart I Koenig
Marta C Wade
Fredric J Greenblatt

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1:14-13981 Encino Center LLC

Chapter 11

#16.00 Status conference re chapter 11 case

fr. 11/6/14; 2/12/15; 6/11/15; 7/9/15(stip); 8/20/15; 10/22/15;
1/7/16; 2/18/16; 3/24/16; 6/9/16; 7/28/16

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Encino Center LLC

Represented By
Sandford Frey
Stuart I Koenig
Marta C Wade

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1:15-13471 Stage Coach Venture, LLC

Chapter 11

#17.00 Debtor's motion to enlarge time to confirm chapter 11 plan

Docket 90

***** VACATED *** REASON: Case dismissed with 180-day bar on 9/27/16
[doc. 106]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stage Coach Venture, LLC

Represented By
Evan L Smith

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1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#18.00 Trustee's motion for order disallowing debtor's claim of homestead exemption
fr. 6/9/16; 7/14/16; 7/28/16;

Docket 81

Tentative Ruling:

According to the *Motion Pursuant to Bankruptcy Rule 9019(a) for an Order Approving Settlement Between David Gottlieb, Chapter 7 Trustee and Debtors Duane Daniel Martin and Tisha Michelle Martin* [doc. 115] (see Calendar #19), this matter is now resolved.

Appearances are excused on October 6, 2016.

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Alan W Forsley

Joint Debtor(s):

Tisha Michelle Martin

Represented By
Alan W Forsley

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong

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1:16-10045 Duane Daniel Martin and Tisha Michelle Martin

Chapter 7

#19.00 Motion pursuant to Bankruptcy Rule 9019(a) for an order approving settlement between David Gottlieb, chapter 7 trustee, and Debtors Duane Daniel Martin and Tisha Michelle Martin

Docket 115

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Duane Daniel Martin

Represented By
Alan W Forsley

Joint Debtor(s):

Tisha Michelle Martin

Represented By
Alan W Forsley
Alan W Forsley

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong
Beth Ann R Young

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1:16-11998 Scott Howard Gerstein

Chapter 7

#20.00 Order to show cause re dismissal for failure to comply with rule 1006(b)

Docket 16

***** VACATED *** REASON: Case dismissed on 8/30/16 for failure to
appear at 341(a) mtg**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott Howard Gerstein

Pro Se

Trustee(s):

Diane Weil (TR)

Pro Se